

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,
Defendant.

Civil Action No. 03-40266-CBS

AFFIDAVIT OF DEBORAH S. GRIFFIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON
LIQUIDATED DAMAGES AS THE EXCLUSIVE REMEDY FOR DELAY

I, Deborah S. Griffin, am an attorney in the Boston office of Holland & Knight LLP and counsel of record for American Manufacturers Mutual Insurance Company (“AMMIC”) in this matter. I have personal knowledge of the following, except where stated to be upon information and belief. I make this affidavit in support of Plaintiff’s Motion for Partial Summary Judgment on Liquidated Damages as the Exclusive Remedy for Delay.

1. Attached hereto as Exhibit A is a true and accurate copy of the contract (the “Contract”) between the Town of North Brookfield (the “Town”) with E.J. Sciaba Contracting Company (“Sciaba”) dated as of April 19, 2002, for construction of the Junior/Senior High School, North Brookfield, Massachusetts (the “Project”). This document was marked as Deposition Exhibit 22 in the deposition of Lee Dore (“Dore”), Rule 30(b)(6) witness for the architectural firm of Dore & Whittier, Inc. (“Dore & Whittier”), at pages I:62-63.

2. Attached hereto as Exhibit B is a true and accurate copy of the contract for design and construction administration services between the Town and Dore & Whittier for the Project, dated June 6, 2001. This document was marked as Deposition Exhibit 8 in the Dore deposition at pages I:27-29.

3. Attached hereto as Exhibit C is a true and accurate copy of the contract for construction management services between the Town and Dore & Whittier for the Project, dated June 6, 2001, and signed May 1, 2002. This document was marked as Deposition Exhibit 7 in the Dore deposition, at pages I:33-35.

4. Attached hereto as Exhibit D is a true and accurate copy of a letter I sent to Thomas W. McEnaney, attorney for the Town of North Brookfield, on June 5, 2003, together with its enclosure, which is a true copy of a letter dated May 30, 2003, from Sciaba to the Town.

5. Attached hereto as Exhibit E is a true and accurate copy of a letter I sent to Mr. McEnaney on November 12, 2003, together with its enclosures. This group of documents was also marked as Exhibit 92 in the deposition of James Murray (“Murray”), Rule 30(b)(6) witness for the Town of North Brookfield, at page I:139.

6. Attached hereto as Exhibit F is a true and accurate copy of a letter I sent to Mr. McEnaney on November 21, 2003, together with its enclosures. This group of documents was also marked as Exhibit 95 in the Murray deposition at page I:145.

7. Attached hereto as Exhibit G is a true and accurate copy of the executed Completion Contract between the Town of North Brookfield and Fontaine Bros., Inc. (“Fontaine”) dated December 15, 2003, which was marked as Exhibit 96 in the Murray deposition at pages I:145-46.

8. Attached hereto as Exhibit H is a true and accurate copy of North Brookfield’s notice to proceed with work under the Executed Completion Contract, given to Fontaine, dated December 15, 2003, which was marked as Exhibit 98 in the Murray deposition at page I:146.

9. Attached hereto as Exhibit I is a true and accurate copy of the daily report of Dore & Whittier's construction manager, Chris Conway, for December 16, 2003, Bates numbered MDW014601-02, which was marked as part of Exhibit 28 in the Dore deposition at page I:81.

10. Attached hereto as Exhibit J are true copies of the following pages of the transcript of the first volume of the deposition of Lee Dore, Project Manager for Dore & Whittier, the project architects on the North Brookfield Junior/Senior High School, and Dore & Whittier's designated 30(b)(6) fact witness: I:1, 6-9, 27-29, 33-35, 62-63, 70-71, 74-75, 81, 125-132, 158-59, 179, errata page.

11. Attached hereto as Exhibit K is a true and accurate copy of the following pages of volume one of the Project Manual, which was part of Sciaba's contract with the Town, that was marked as Exhibit 78 in the Murray deposition at page 53: pages MDW11428-29, MDW11510.

12. Attached hereto as Exhibit L is a true and accurate copy of the performance bond AMMIC issued to the Town as surety on behalf of Sciaba, as principal, with respect to the Contract. A copy of the bond was attached to the Town's Counterclaim as Exhibit A.

13. Attached hereto as Exhibit M are true copies of the following pages of the transcript of the deposition of James Murray, the Town of North Brookfield's designated 30(b)(6) fact witness: I:1, 5-13, 53, 97-99, 139, 145-46.

14. Attached hereto as Exhibit N is a true and accurate copy of the minutes of the April 16, 2003 School Building Committee meeting marked as Exhibit 45 in the Dore deposition at pages I:125-26.

15. Attached hereto as Exhibit O is a true and accurate copy of a letter I received from Mr. McEnaney on or about January 15, 2004, without its enclosure. The letter from Mr.

McEnaney was marked as Exhibit 193 in the deposition of Robert J. O'Neill ("O'Neill"), Superintendent of Schools for the Town of North Brookfield, at pages I:172-73.

16. Attached hereto as Exhibit P is a true and accurate copy of the enclosure that accompanied Exhibit O, a letter dated December 31, 2003, which was also marked as Exhibit 66 in the Dore deposition at page I:179 and further identified in the O'Neill deposition at page I:173.

17. Attached hereto as Exhibit Q is a true and accurate copy of Dore & Whittier Invoice No. 53, NB041569-71, which was included in the group of invoices marked as Exhibit 190 in the O'Neill deposition at pages I:167-69.

18. Attached hereto as Exhibit R is a true and accurate copy of a letter I received from Mr. McEnaney on or about November 3, 2003, without its enclosure. The letter from Mr. McEnaney was marked as Exhibit 60 in the Dore deposition at pages I:167-69.

19. Attached hereto as Exhibit S are true copies of the following pages of the transcript of the deposition of Robert J. O'Neill: I:1, 4-6, 167-69, 172-73, errata page.

Signed under the penalties of perjury this 16th day of December, 2005.

/s/ Deborah S. Griffin
Deborah S. Griffin

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